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Letter dated 17 July 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Germany submitted pursuant to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

06-43692 (E) 140806

Annex

Letter dated 13 July 2006 from the Counsellor of the Permanent Mission of Germany to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

With reference to your letter of 15 May 2006, I have the honour to transmit the information requested from Germany on implementation of the provisions of Security Council resolution 1624 (2005).

(*Signed*) Dr. Beate **Maeder-Metcalf**
(Counsellor)

Enclosure

United Nations Security Council Resolution 1624 (2005)
Questions regarding Implementation in Germany

Paragraph 1

1.1 What measures does Germany have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

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German criminal law does not contain a general definition as to what is to be understood as a terrorist criminal offence; correspondingly, it does not contain specific provisions for incitement to commit a terrorist act. Rather, criminal liability in these cases is in principle governed by the generally applicable provisions of the Criminal Code (Strafgesetzbuch – StGB). Therefore, whoever intentionally induces another to intentionally commit an unlawful act will be punished the same as the perpetrator (section 26 StGB). Furthermore, the StGB provides that whoever attempts to induce or incite another to commit a serious criminal offence (i.e. an unlawful act which is punishable by at least one year in prison) is subject to punishment (section 30 (1) StGB). Whoever declares his willingness, accepts the offer of another, or agrees with another to commit or incite the commission of a serious criminal offence is subject to punishment as well (section 30 (2) StGB).

In the context addressed in the question, the following offences from the special part of the StGB (which stipulates and defines individual crimes) are relevant as well:

(1) Section 129 (5) StGB – Formation of Terrorist Groups

Pursuant to section 129a (1) and (2) StGB, whoever forms a group whose aims or activities are directed towards the commission of certain criminal offences enumerated in the StGB, or whoever participates in such a group as a member, is subject to punishment. Taking into account the relevant provisions under European (EU) law, pursuant to section 129a (2) StGB, it is additionally required that the criminal offences stipulated here are intended to seriously intimidate the population, to unlawfully coerce a public authority or an international organisation through the use of force or the threat of use of force, or to significantly impair or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation, and which, given the nature or consequences of such acts, may seriously damage a country or an international organisation.

Section 129a (5) StGB further provides that whoever supports such a group or recruits members or supporters for such a group shall be punished. In this context, "support" means certain types of aiding and abetting by a non-member of the terrorist group. This requires an

act which is effective to promote, enhance or secure the specific threat potential of the terrorist group and is beneficial to the organisation. "Recruiting members or supporters for the terrorist group" means propaganda activities for the benefit of the group directed at individuals or the public, to the extent that this recruitment is directed toward the group's organisational preservation or enhancement by way of accession of new members or support activities by third parties.

Section 129a StGB also applies to terrorist organisations abroad (section 129b, first sentence StGB).

(2) Section 111 StGB – Public Incitement to Crime

Section 111 StGB provides that whoever publicly, in a meeting or through dissemination of writings, including audio and visual recording media, data storage media, illustrations and other images, incites an unlawful act, shall be punished as an inciter. It is irrelevant in this context whether the incitement is successful or not.

Necessary for criminal liability to attach pursuant to this provision is an influence upon other persons with the aim of arousing in them the decision to commit criminal acts. In this context, the term "incitement" means that it must be recognisable from the incitement that the will of the inciter is for his addressee to commit criminal acts.

For criminal liability to attach pursuant to section 111 StGB, it is also irrelevant whether the incitement actually results in criminal conduct or not. Whether the incitement is made directly or indirectly is insignificant as well. As indicated above, the provision does not require the perpetrator to explicitely incite an unlawful act. Rather, his statements must be interpreted and be understood as meaning that he is inciting the addressee to such conduct.

(3) Section 140 (2) StGB – Rewarding and Approving Crimes

This provision provides that whoever publicly, in a meeting or through dissemination of writings, approves of certain enumerated unlawful acts in a manner that is capable of disturbing the public peace, is subject to punishment. The approval must recognisably refer to a concrete act. It need not be expressed explicitely, and may arise from the attendant circumstances.

Pursuant thereto, the urging of terrorist acts, for example by way of the glorified portrayal of a terrorist crime as necessary and justified, may lead to application of this provision.

(4) Section 130a StGB – Instructions for Crimes

Pursuant to section 130a StGB, providing instructions for certain crimes is punishable. The perpetrator may be prosecuted for providing instructions to crimes pursuant to section 130a StGB if the inducement or urging is undertaken by way of writings (including audio and visual

recording media, data storage media, illustrations and other images), which is capable of serving as instructions for a terrorist act specified in the law, or gives such instructions publicly or in a meeting. However, a condition for this is that the remaining prerequisites of section 130a StGB have been fulfilled with regard to the manner of dissemination and the purpose of the writing and/or its dissemination.

- II. -

It is currently being assessed whether more extensive criminal legislation is necessary to combat international terrorism – based upon the coalition agreement between the parties which form the federal government.

- III. -

Preventing criminal acts – including those discussed above – is the responsibility of the police. Furthermore, efforts directed at promoting commission of terrorist acts are subject to investigation by intelligence services, for example efforts which incite the commission of terrorist acts. Associations that pursue such endeavours violate the criminal laws specified above and are thus prohibited pursuant to Article 9 section 2 of the Basic Law (German constitution) (such prohibitions are issued in a special proceeding pursuant to the law governing private associations; associated with this is confiscation of the association's assets). Another possibility of prohibition exists in the case of associations whose purpose or activities are directed against the principle of international understanding. Repeated use has been made of these prohibition possibilities: for example, the organisation "Kalifatstaat" ("State of the Caliphate") was prohibited in 2001, and the "Hizb-ut Tahrir" in 2003. Also, pursuant to section 47 (2) no. 2 of the Residency Act, political activities by foreigners are prohibited to the extent that they are designed or apt to publicly support, advocate or induce the use of violence as a means to advocate political, religious or other concerns.

Reference is also made to the response to question 1.2.

1.2 What measures does Germany take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

Reference is made in this regard to the response to question 1.1.

Furthermore, Germany participates actively in criminal prosecution on an international level by way of mutual legal assistance. However, the priority is to ensure that the persons concerned do not enter Germany in the first place. On this point, section 5 (4) of the Residency Act provides that the issuance of a residence title shall be denied if the foreigner

has publicly called for the use of violence. This is simultaneously a ground which usually justifies expulsion of foreigners from Germany (section 54 no. 5a Residency Act).

Security authorities are involved in assessing these factual situations, both in visa procedures as well as in the issuance of residency titles (especially for the legally protected settlement permit, but if necessary for other residency titles as well) pursuant to section 73 Residency Act. The close organisational cooperation between foreigners authorities, police and intelligence services to clarify relevant factual situations is ensured particularly by way of a special working group within the German Joint Counter-Terrorism Centre.

Paragraph 2

1.3 How does Germany cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

In the relevant areas, Germany does not act alone, but rather within an international security alliance, particularly within the framework of the European Union. The European Union has reacted quickly and comprehensively to Islamist terrorism. Directly following the attacks of 11 September 2001, a broadly-conceived action plan to combat terrorism was resolved; this was updated and supplemented after the bomb attacks of 11 March 2004 in Madrid. The action plan was extended with additional measures and a joint strategy for combating terrorism following the attacks of 7 and 21 July 2005 in London.

The action plan includes more than 160 specific measures, including those in the areas of the police, visa policy, border protection, foreign policy (cooperation with international organisations, for example the United Nations, or with third countries), civilian and health protection, as well as air and sea security. Many of the measures provided for by the plan have meanwhile been implemented.

- For example, a Task Force which carries out comprehensive analyses has been established in the Europol region.
- Work has continued on the development of the so-called Schengen Information System (SIS; the system contains information on third country nationals who have been denied entry into a member state of the SIS) and its use possibilities. The necessary legal instruments for new and expanded access to SIS by the EU agencies Europol and Eurojust and foreign authorities have been worked up. The continued technological development of SIS into SIS II is underway. Furthermore, the establishment of a

European visa database (VIS) has been commenced. A proposal has been submitted for access to VIS by security authorities.

- Also, a European terrorist list has been compiled, which serves as the legal basis for the freezing of assets throughout the EU, as well as for close cooperation between national police and justice systems.

- The EU rapidly came to a consensus with regard to standards for inclusion of biometric data in passports, visas and residency titles. As early as November 2005, Germany began issuing passports with biometric data, and has thus far issued 1.5 million biometric passports to its citizens.

- The EU's border protection agency FRONTEX has been operational since 1 May 2005 and has initiated its work in Warsaw.

- In the area of air safety, an EU Directive set down the civil aviation security standards contained in the so-called DOC 30 of the European Civil Aviation Conference (ECAC), which until then had been mere recommendations. This provides, among other things, that all luggage is to be x-rayed, and that personnel is to be searched upon entering certain security-restricted areas.

- The Framework Decisions on a uniform definition of the elements of the crime of terrorism, on joint investigation teams, and on the introduction of a European arrest warrant are additional examples of measures on the EU level. Cooperation between intelligence services and the police on the EU level has been intensified as well.

In addition to the European level, Germany is working in different multilateral fora on numerous counter-terrorism activities and initiatives. Particularly within the framework of the United Nations, G8 and NATO, as well as in other international organisations, continual work is being undertaken on measures to combat terrorism.

The German Federal Police Central Bureau has access to the "stolen and lost travel documents" data kept by Interpol. The Federal Criminal Police Office has thus far entered approximately 1.5 million German data into the database, which are thereby accessible worldwide. The German data is kept current by means of an automated update done on a daily basis.

In addition to cooperation within the EU and in multiple international fora, Germany is also working intensively with its partners on a bilateral level in order to combat international terrorism. In particular, bilateral cooperation with European and G8 partners is characterised by regular intensive contacts on all levels of the ministries, via consular channels and between security authorities. Topics discussed at ministerial level are addressed thoroughly and implemented at expert level. This is undertaken with a view towards exchanging current

threat assessments and achieving additional intensification of cooperation by way of joint measures and initiatives in combating terrorism.

Paragraph 3

1.4 What international efforts is Germany participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

In 2002 the German Foreign Ministry established a special *task force for dialogue with the Islamic World*. Headed by the Commissioner for the Dialogue with the Islamic World, Ambassador Gnodtke, the task force serves as a tool in order to enhance and broaden understanding between Germany and the Islamic World for the cultures and traditions of each other. This implies mutual tolerance and respect.

The Federal Republic of Germany has participated in many projects in multilateral fora with the goal to support and to encourage intercultural dialogue. Cultural activities, especially if with a multilateral approach, offer a platform for exchange and Cooperation. With this in mind European Partners (including Germany), together with Mediterranean partners within the so-called Barcelona process, have established the *Anna Lindh Euro-Mediterranean Foundation for the Dialogue between Cultures* in 2005 in Alexandria. Germany considers the Foundation an excellent dialogue platform, and the Federal Foreign Office makes financial contributions towards projects implemented by the Foundation.

As there are multiple international organizations with specific action plans to promote dialogue, just a few outstanding examples in this field are highlighted in this report.

Germany actively supports the EU resolution against any forms of religious intolerance traditionally tabled in UN' human rights fora.

The year of intercultural dialogue initiated by the EU, which includes a number of specific actions, will take place in 2008. Germany is attaching great importance to these events.

The Council of Europe is committed to encourage intercultural dialogue. Since the adoption of the "*Faro Strategy*" in 2005 progress has been made, including practical steps such as the launching of the "All different - All equal" youth campaign. The preparation of the Council of Europe White Paper on intercultural dialogue - through an inclusive process open to all relevant actors - will constitute a meaningful contribution to international efforts in this field. Germany is one of the main financial contributors to the Council of Europe and fully supports activities aiming at fostering intercultural dialogue.

Within the framework of its new focus on promoting tolerance and combating racism, xenophobia, discrimination and anti-Semitism, the OSCE also takes into account the instrument of dialogue. Following a series of annual conferences in the area of tolerance and non-discrimination, the OSCE is concentrating on implementation in thematic meetings in 2006. One of them, the Tolerance Implementation Meeting on promoting inter-Cultural, Inter-Religious and inter-Ethnic Understanding in Almaty, 12 and 13 June 2006, puts special emphasis on inter-cultural, inter-religious and inter-ethnic partnerships and dialogue. The Federal Republic of Germany was represented by its Commissioner for Human Rights Policy and humanitarian Aid at the Federal Foreign Office.

1.5 What steps is Germany taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

Reference is made to the replies to questions 1.1 and 1.2.

The abovementioned regulations regarding the prohibition of associations also apply to associations that follow educational, cultural or religious goals. To the extent that public rather than private institutions are involved, substantive monitoring and authority over personnel decisions ensure that infiltration by terrorists or their supporters is excluded. Furthermore, the overall counter-terrorism strategy in Germany is directed towards both preventing opportunities for agitation (for example by issuing and enforcing prohibitions against extremist associations and prohibitions to engage in certain activities against persons; expulsions of foreigners who engage in extremist activities; and cooperation with associations of religious minorities), as well as towards working preventively to decrease susceptibility to such agitation (for example, by strengthening democratic consciousness and civil-society commitment to democracy and tolerance and against extremism and violence, as well as integrating immigrants and institutions of differing cultural and/or religious background and engaging in inter-religious dialogue). This corresponds to the European Union's strategy to combat terrorism, which also includes such preventive measures as combating the causes and factors of radicalisation; this is placed in concrete terms in a special strategy to combat radicalisation and recruitment for terrorism and an attendant action plan.

Paragraph 4

1.6 What steps is Germany taking to ensure that measures taken under paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all its obligations under

International law, in particular international human rights law, refugee law and humanitarian law?

German criminal law provisions relating to UNSC Resolution 1624 (for instance relating to counselling or instructing the commission of a terrorist act) are in compliance with Germany's constitutional framework, including constitutionally garanteed basic rights ("Grundrechte"), as well as with Germany's international obligations.

In this context, a central provision in German law is Article 1 para. 3 of the Basic Law (German constitution). It provides that human rights, specified as so-called basic rights in the German Basic Law, are binding upon legislature, executive and judiciary as directly applicable law. Another important provision in German law is Article 20 para. 3 of the Basic Law, which provides that the legislature is bound by the constitutional order (including with regard to the implementation of Resolution 1624).

In addition to the aforementioned basic rights, the constitutional order also encompasses the rule of law principle, which includes the principle of proportionality. In the German understanding, the purpose of the principle is, i.a., to protect against unreasonable interference by the state into individual basic rights, particularly the general freedom of expression, pursuant to Article 2 section 1 of the Basic Law. As a constitutional law principle, the principle of proportionality is directly binding on all state authority.

As explained in the answers above, Germany's criminal law has specific provisions that address inciting the commission of a "terrorist activity" or a "terrorism offence." Careful attention was paid to constitutional basic rights (i.e. human rights) protections in the development and implementation of this law. The provisions of the criminal law were tailored to protect the national security and to prevent criminal ("terrorist") offences, while respecting civil liberties, such as the constitutional basic rights, as well as Germany's international obligations.